

## **Rules of Procedure for Applications for Local Map Amendments and Petitions for Special Exceptions**

Originally Adopted on March 21, 1978, Resolution No. 8-1857; as Amended, September 19, 1978, Resolution No. 8-2189; August 6, 1985, Resolution No. 10-1459; July 8, 1986, Resolution No. 10-2074; January 30, 1996, Resolution No. 13-414; and January 14, 1997, Resolution No. 13-769.

The Rules of Procedure for Local Map Amendments and Petitions for Special Exception are approved as follows:

### **1.0 Applications**

1.1 Filing - Applications for a local map amendment must be filed at the Office of Zoning and Administrative Hearings in triplicate on forms provided by the Office. Each application must contain all information required by Article 28 of the Maryland Code and Chapter 59 of the Montgomery County Code including but not limited to the following materials:

- (a) Contents - Description of land by metes and bounds or subdivision lot, location, area, present zoning, and zoning requested;
- (b) Documentation - Identification plat, vicinity map, and master plan zoning map;
- (c) Identification of all persons with a 5% or greater ownership interest in the land, although publicly traded corporate applicants only need to submit the name and location of the government agency where their stockholder records can be examined;
- (d) A disclosure statement relating to political contributions to candidates.

1.2 Subsequent Filings - The application process contains restrictions on repeated filings for the same property as contained in Section 59-H-2.23. The Council may waive these limitations by authorizing withdrawal of the prior application without prejudice.

1.3 Amendments - An application may be amended at any time before the close of the record in a case before the hearing examiner. An amendment cannot change the zone requested or increase the area requested to be rezoned although an amendment may reduce the area. A development plan amendment may be filed at any time prior to the Report and Recommendation of the Hearing Examiner and any subsequent amendments must be approved by the District Council.

- 1.4 Filing Fees - Filing fees are established and revised periodically by resolution of the District Council. The Hearing Examiner may waive a filing fee up to \$10,000 if it is determined that the waiver is in the public interest and consistent with District Council policies; provided further, that any waiver above \$10,000 may be approved by the District Council if it determines that a waiver is in the public interest. Refunds of filing fees are limited pursuant to the provisions of Section 59-H-2.33. The filing fees for a development plan amendment or a schematic development plan or amendment are not refundable.
- 1.5 Advance Notice of Hearing - The Office must provide the applicant at least sixty days prior notice of the date set for hearing on the application, although the applicant may waive thirty days of this notice and request an earlier hearing by filing a written waiver with the Office.
- 1.6 Filing Out of Order - Requests to suspend the filing period limitation for applications must be submitted in writing to the Council President and include the reasons why the filing period limitation should be suspended. The Office will provide the District Council with a recommendation on these requests.
- 2.0 Notice
- 2.1 Posting - The Office will provide the required zoning sign to be erected on the subject property by the applicant in accordance with applicable provisions of Section 59-H-4.23. The Office will also furnish an affidavit of posting form to each applicant to be submitted at the public hearing to verify that the posting requirements of the Zoning Ordinance are satisfied.
- 2.2 Advertisement - The Office will publish a notice in two County newspapers of general circulation at least 30 days prior to the date of the hearing. The newspaper notice must include the application number, location and size of the property, name of the applicant, change of classification requested, date, time and place of the public hearing, and the place where copies of the application and the case file may be examined.
- 2.3 Informational Mailing - The applicant must provide notice by mail to all owners of property abutting the subject property and confronting it across a public or private street in accordance with the following requirements:
- (a) The identity of current property owners must be consistent with information maintained by the Montgomery County Office of Assessments.

- (b) At the time of filing, the Office will furnish to the applicant a form letter which must be completed and include all pertinent information concerning the requested reclassification. The form letter must be sent to all abutting and confronting property owners within 3 days after the filing of the application.
- (c) The Office will also furnish an affidavit of mailing form to each applicant to be submitted at the public hearing along with a list of all persons notified to verify that the mailing requirements are satisfied.
- (d) Persons receiving informational notice by mail are responsible for ascertaining the date and place of the public hearing and for keeping themselves advised as to the status of the application. Upon request the Office will provide additional information on the public hearing dates.
- (e) Inadvertent failure to provide informational notification to every abutting and confronting property owner or other interested party will not invalidate the zoning action.

### 3.0 Pre-hearing Procedure

3.1 Applicant's Pre-hearing Submission - The applicant must file a pre-hearing statement at the Office in duplicate no later than thirty days prior to the date set for the hearing with copies to parties of record. The Office will provide a copy of the statement to the Technical Staff of the Maryland-National Capital Park and Planning Commission. The statement must include the following information:

- (a) a statement of the grounds upon which the case is based;
- (b) copies of all reports intended to be introduced at the hearing;
- (c) a summary of expert testimony which will be proffered at the hearing;
- (d) identity of all witnesses who will testify; and
- (e) estimated time required for presentation.

3.2 Opposition's Pre-hearing Submission - Persons or associations represented by counsel or intending to appear in organized opposition to an application must also file a similar pre-hearing statement no later than ten days prior to the date of hearing. Nothing in this section should be construed to limit the rights

of individual members of the public to submit testimony during the hearing or to submit pertinent written materials at any time while the record remains open.

- 3.3 Limitations on Submissions - The information or witnesses disclosed in compliance with Sections 3.1 and 3.2 above does not require the parties to introduce the same at the hearing.
- 3.4 Sanctions - Failure to comply with Sections 3.1 or 3.2 may cause a postponement, continuation of the hearing, or a decision to leave the record open for a specified time to permit rebuttal evidence. Advertisement or transcript costs of a continued or postponed hearing may be assessed to the party who failed to comply with these requirements and any assessment must be paid to the County prior to the issuance of the Hearing Examiner's Report and Recommendation. In the event these costs are not paid, an enforcement order may be adopted by the District Council and referred to the County Attorney for collection. If the noncomplying party is the applicant, the District Council may also dismiss the application without further proceedings. If the noncomplying party is the opposition, the delinquency must not operate to delay the Hearing Examiner's Report and Recommendation.
- 3.5 Subpoena - Any party may request in writing that a subpoena be issued by the hearing examiner to require attendance of a witness or the production of documents at a scheduled hearing. The request must be filed in sufficient time to permit proper service. In the case of witnesses who are state or county employees, the hearing examiner may secure their attendance on a voluntary basis.
- 3.6 Public Access to Records - During the pendency of an application before the District Council, the record will be maintained by the Office and will be available for public inspection during normal business hours. All parties in a case are charged with knowledge about the contents of the record and should periodically inspect it. Copies of reproducible documents of record will be provided by the Office upon request at a fee established by the Office. The record in any completed case may also be examined at the Office provided reasonable prior notice is given in order to permit retrieval of the file.
- 3.7 Requests for Postponements of Hearing - All requests for postponements of the date of the public hearing must be made in writing with copies to parties of record. Requests must be received within a reasonable time prior to the scheduled public hearing date.
- 4.0 Hearings

- 4.1 Time, Location and Testimony - A transcribed public hearing for the purpose of taking evidence upon a local map amendment will be held at such times and places as the hearing examiner designates. Testimony under oath is not required unless requested by a party and the hearing examiner determines that it is necessary to insure the receipt of credible and probative evidence.
- 4.2 Authority of Hearing Examiner - It is the duty of the hearing examiner to inquire fully into the facts in order to make a complete record in the most expeditious manner. The authority of the hearing examiner with respect to cases to be heard is as follows:
- (a) administer oaths as deemed necessary;
  - (b) grant applications for subpoenas;
  - (c) rule on petitions to revoke subpoenas;
  - (d) rule upon offers of proof and receive relevant evidence;
  - (e) regulate the course of the hearing;
  - (f) hold conferences for simplification of the issues by consent of the parties;
  - (g) dispose of procedural requests or similar matters including motions to amend and to order hearings reopened, or upon motion consolidated;
  - (h) call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;
  - (i) request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of it; and
  - (j) take any other action authorized or necessary under these rules.
- 4.3 Rules of Evidence - The strict rules of evidence do not apply to these proceedings. The hearing examiner may admit and consider any evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Effect is given to the rules of privilege recognized by law. Incompetent, irrelevant, immaterial and repetitious evidence may be excluded.
- 4.4 Cross-Examination - A reasonable amount of cross-examination of witnesses for applicant, public agencies, and opposition, must be permitted but questioning may be confined to the scope of direct

testimony given by the witness. The hearing examiner may require that a spokesman for aligned parties be designated to conduct cross-examination.

4.5 Demonstrative Evidence - Photographs of a size to permit filing in the record may be required instead of large or poorly visible physical exhibits. Other demonstrative evidence may be submitted if it can be reasonably included in the record.

4.6 Order of Presentation - The order in presenting evidence at a hearing is as follows:

- (a) applicant's case in chief;
- (b) testimony by public agency representatives;
- (c) opposition's case in chief;
- (d) rebuttal by applicant;
- (e) surrebuttal by opposition; and
- (f) reply by applicant.

4.7 Closing of Record - The record in a zoning case will close after receipt of all pertinent evidence. The time for closing the record will normally occur at the conclusion of a hearing but may be set for a time certain after the conclusion of the hearing at the hearing examiner's discretion. The hearing examiner may reopen the record to receive additional evidence or receive further evaluation of the application by appropriate government agencies. However, the reopening of the record must not unduly delay consideration of the application.

4.8 Official Notice - The hearing examiner may, at any time prior to the close of the record, take official notice of public records and publications and generally known facts. When official notice is taken, the hearing examiner must provide the parties notice and an opportunity to rebut.

5.0 Oral Argument

5.1 Request - A request for oral argument must be in writing and filed with the Council President no later than ten days after the date of the hearing examiner's report.

5.2 Requesting Party - The person or association submitting the request should be a party of record or a person aggrieved. A person aggrieved is generally considered one whose personal or property rights are affected by the proposed zoning in a way different from that suffered by the public generally.

- 5.3 Contents of Request - The request must include concise and specific reasons why the District Council should grant oral argument. It is not the function of the request itself to present detailed argument on merits of the case. The detailed arguments on the merits must be made only during oral argument if the District Council grants the request.
- 5.4 Request in Writing - All communications whether in support of or in opposition to the request for oral argument must be in writing. Any other forms of communication will not be considered by the District Council.
- 5.5 Notice to Other Side - A copy of the request must be mailed to representatives of the other side or their attorneys. The other side may respond in writing to the request for oral argument, although this response must be made promptly because the District Council may take up the oral argument request at any time following its timely receipt. A copy of the response must be mailed to those persons who requested oral argument.
- 5.6 Notice of Consideration - The District Council will advise all parties when the oral argument request will be considered and will also notify them of its decision. The pendency of an oral argument request does not limit the ability of the District Council to consider the application on its merits so long as the Council's agenda specifies that action may be taken on the case.
- 5.8 Limitations of Oral Argument - Oral argument must be confined to the evidence of record before the hearing examiner and no additional evidence can be considered by the District Council during oral argument. However, the District Council can be informed that pertinent evidence does exist which should be made part of the record and these circumstances justify a remand to the examiner. The District Council may require a Planning Board representative, other government official, and the hearing examiner to be present at oral argument and may direct inquiries to them about matters of record.
- 6.0 Decision
- 6.1 Time - The District Council may consider an application for decision on its merits following the expiration of the ten day period for oral argument requests.

- 6.2 Resolution - A proposed resolution to implement the hearing examiner's recommendation will be prepared by the Office and submitted to the District Council prior to its consideration of the application on its merits.
- 6.3 Notice - The District Council will notify all parties of its decision and advise them of the procedures available for reconsideration and appeal.
- 7.0 Reconsideration
- 7.1 Request - Any party may request the District Council to reconsider its decision within thirty days by filing a written request with the Council President which contains reasons for the reconsideration and copies of the request must be sent to parties of record.
- 7.2 No Stay of Appeal Time - The filing of a request for reconsideration does not extend the thirty day period of finality of a District Council decision or extend the time for appeal and, for these reasons, the request must be filed in sufficient time to permit the District Council to schedule the request on its agenda and consider it.
- 8.0 Request for Withdrawal
- 8.1 Requests - Requests for withdrawal must be in writing with copies to parties of record and filed with the Council President and include the reasons why the request should be granted and a proposed resolution to implement the request. A party may file written opposition to the request but the opposition must be filed prior to the consideration of the request.
- 8.2 Notice of Consideration - The District Council will not consider any request for at least ten days. It will advise all parties when the request will be considered and will also notify them of its decision.
- 9.0 Filing Fee Refunds
- 9.1 Request - Request for filing fee refunds may be made as part of a request for withdrawal and are subject to the same procedures. The circumstances under which refunds are available and the amount of the refund are contained in Section 59-H-2.33.
- 10.0 Petitions for Special Exception
- 10.1 Filing - Petitions for special exception must be filed at the Office of Zoning and Administrative Hearings in triplicate on forms provided by the Office and include all data required by Section 59-A-



4.22, together with a non-refundable filing fee, as prescribed by the District Council, and a sign deposit, 75% of which will be refunded if the sign is returned in good condition.

- 10.2 Amendment - A petition may be amended at any time before the close of the record. An amendment may not increase the area to be covered by the petition or increase the intensity of use.
- 10.3 Notice - The Office will provide a sign to be erected on the subject property by the petitioner in accordance with the provisions of Section 59-A-4.43. The Office must provide notice of filing and hearing date, time and location to agencies and abutting and confronting property owners as specified in Section 59-A-4.46. The hearing may not be held any sooner than 60 days following the mailing of the notice.
- 10.4 Pre-hearing Submission - The petitioner and parties in opposition must comply with the pre-hearing submission requirements of Rules 3.1 and 3.2
- 10.5 Subpoena - Any party may request in writing that a subpoena be issued by the hearing examiner to require attendance of a witness or the production of documents at a scheduled hearing. The request must be filed in sufficient time to permit proper service. In the case of witnesses who are state or county employees, the hearing examiner may secure their attendance on a voluntary basis.
- 10.6 Public Access to Record - During the pendency of an application before the District Council, the record will be maintained by the Office and will be available for public inspection during normal business hours. All parties in a case are charged with knowledge about the contents of the record and should periodically inspect it. Copies of reproducible documents of record will be provided by the Office upon request at a fee established by the Office. The record in any completed case may also be examined at the Office provided reasonable prior notice is given in order to permit retrieval of the file.
- 10.7 Requests for Postponements of Hearing - All requests for postponements of the date of the public hearing must be made in writing with copies to parties of record. Requests must be received within a reasonable time prior to the scheduled public hearing date.
- 10.8 Hearing - The hearing will be conducted under the provisions of Rule 4.0
- 10.9 Oral Argument - Requests for oral argument will be considered under the provisions of Rule 5.0; except that only persons authorized under 59-A-4.61(e) may file a request.

- 10.10 Decision and Vote - The decision of the District Council must be rendered within 30 days of the transmittal of the Hearing Examiner's Report, unless the time is extended by the Council. An affirmative vote of a majority of the Council is required to adopt an Order granting a petition for special exception in accordance with Section 59-A-4.62.
- 10.11 Reconsideration.
- (a) Request. A request for reconsideration must be filed within 10 days after the initial decision and must be in writing and specify the reasons supporting the request. The party requesting reconsideration must serve all parties of record and any party may file a response to the request within 10 days. The District Council must act either to grant or deny the request within 30 days after it is filed.
  - (b) Motion. A motion for reconsideration may be made by any Councilmember and the motion may be made within 30 days from the date of the initial decision, provided that reconsideration may be granted only on evidence of change in circumstances, new evidence that could not reasonably have been presented at the original hearing, mistake or misrepresentation. If no motion is made, a request for reconsideration is considered denied.
- 10.12 Appeal. Any aggrieved party may appeal a decision of the District Council under the provisions of Section 59-A-4.64.